

APP/18/00943 | A material change of use of Land as a wedding and events venue and ancillary operational development to the material change of use. | Tournerbury Woods, Tournerbury Lane, Hayling Island 20.0742

Thank you for consulting me on this retrospective application and thank you for your patience during the long delay in responding.

The application is accompanied by a Shadow Habitats Regulations Assessment (HES, April 2020) and an Ecological Impact Assessment (HES, June 2020). As discussed with you previously, the difficulty with this retrospective application is being able to objectively assess the likely ecological impacts of the activities that have already occurred and for which there is minimal, or no, 'before-and-after' data. The existing dataset comprises previous ecological reports submitted by the applicant (those submitted with this application and previous iterations) as well as site condition reports on the Site of Special Scientific Interest (SSSI) and overlying Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site. Works have clearly at times been carried out in the absence of any prior ecological assessment which is far from satisfactory.

One fundamental issue is the absence of a clear site plan showing the 'proposals' in relation to the ecological features. It is very difficult to objectively assess potential issues without having a site plan.

I note the arguments presented by the applicant's agent in respect to treating this not as a 'proposed development' and the suggestion that consultees do not 'apply assumptions' regarding potential ecological impacts. I would highlight that the submitted ecological reports, as well as other submissions, are wholly based on a series of assumptions that there has been and will be no ecological impact whatsoever (i.e. the site is already operational and wildlife will have adapted to that) and there is much speculation on the potential impacts (e.g. impacts on heronry, noise impacts to SPA birds). The role of statutory consultees such as myself, Natural England and others is precisely to highlight potential issues, using available information and professional judgement to attempt to ascertain, in an objective manner, whether impacts are likely to have occurred or are likely in future. In respect to sites of national and international nature conservation importance it is perfectly reasonable to apply the well-founded precautionary principle i.e. assuming the worst-case scenario in the absence of objective information. The nature of this application does not negate appropriate scrutiny and highlights why retrospective applications, especially in highly-sensitive locations, are wholly unsatisfactory in planning terms. Government Circular 06/05 states *'It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision'*. Retrospective applications do not accord with this, essentially hindering the ability of the consenting authority to objectively assess the impact on protected species (and habitats) in advance of any impacts occurring. In the absence of a satisfactory baseline it is therefore incumbent on consultees to apply caution in assessing ecological impacts and rely on qualified assumption where data are absent. To state that no additional impacts will occur so all is well is not only unacceptable but, in this case, demonstrably not true.

I am content overall that the physical works that have taken place are not likely to have resulted in significant construction impacts to habitats and species in terms of direct harm or disturbance – from the submitted ecological reports it would appear that areas impacted are generally of low ecological value – but this is obviously based on there being no information to determine a satisfactory baseline. In my opinion, the fundamental issues are in relation to disturbance to the designated habitats and qualifying species of the SSSI, SAC, SPA and Ramsar. In addition, there is as yet no information on the potential impact to bats at the site and further survey work has been recommended.

Birds associated with the intertidal habitats around Chichester Harbour are generally present between the autumn and spring passage periods, nominally September to April but with greatest numbers and concentrations between October to March. The birds' presence at a particular site is dictated by tidal state: irrespective of time of day, birds will feed when intertidal muds and vegetation are exposed and generally rest when these areas are covered. In this respect the timing of events is not especially significant and potential disturbance impacts could occur at any time of day or night according to tidal state.

Whilst I do appreciate that there are licensing restrictions in terms of noise and timings and there is certainly no encouragement of visitors to wander into more sensitive areas, there remains an obvious potential for general levels of disturbance to increase significantly given the proposed increase in the number and frequency of events (c.100-200% increase from latest figures). It seems inevitable that an increase in frequency and number of events would lead to increased potential for visual and noise disturbance of bird species in particular. Whilst the applicant may consider this to be 'very unlikely', there is essentially no evidence to confirm this will be the case and there is no justification for this potential impact being screened out of further assessment under the Habitats Regulations: the precautionary principle dictates that this should be screened in.

The issue with noise pollution is not hindrance of bird communication but rather the potential avoidance effects displayed by birds to novel noise incidents. That the site has seen continuous human activity for many years is not especially relevant: the proposals include a new activity taking place at an increased frequency and is thus a new factor to consider. Much academic research has been carried out on waterbird and coastal bird responses to noise (and visual) disturbance (see [Waterbird Disturbance & Mitigation Toolkit](#)) and there is ample evidence that noise and visual disturbance impacts can occur over substantial distances depending on location and type of disturbance. The magnitude of impact will depend on the proximity to the receptor (bird) to the novel noise emission and the amplitude and duration of noise. No evidence has been provided to demonstrate that there would be no impact arising from the proposed activities at the site: it is simply stated that there is no impact. Again, with the proposed increase in the frequency of events (many of which will presumably include amplified music/announcements etc.) it seems obvious that there would be an increased potential for noise-related disturbance events. There is currently insufficient information to determine objectively if there is an issue here.

It is also unclear what, if any, potential for visual disturbance will occur. No evidence, aside from written statements, is provided to demonstrate why guests and visitors would not gravitate towards the very attractive coastline when at the site: it seems inconceivable that guests would not wish to wander around the grounds on a pleasant evening and enjoy views across the harbour. The absence of paved footpaths is not sufficient justification for concluding that impacts would not occur. I find the assessment of potential impacts in Section 5 of the submitted HRA to be incautious: there is clearly the potential, in the absence of mitigating measures, for increased disturbance arising from increased use of the site. The HRA must consider the potential impacts on the conservation objectives of the international sites which includes 'the distribution of the qualifying features within the site'. The [Supplementary Advice on Conservation Objectives](#) (SACO) for the SPA provide details of how noise, visual and other forms of human disturbance can impact the site and its qualifying species. There may well be mitigation actions that can be put in place but these should be discussed in Stage Two of the HRA.

As a result of concluding that impacts can be screened out, the HRA does not include an analysis of existing bird data to confirm that impacts would not occur: these data would be useful to justify why a particular impact is screened out. Having reviewed available 2017/18 Wetland Bird Survey (WeBS) data from the British Trust for Ornithology (BTO) it is clear that the intertidal habitat immediately abutting the site support good numbers of various bird species including dark-bellied brent geese and black-tailed godwit. This again illustrates that there is, at least, the potential for disturbance impacts to SPA bird species feeding at low tide periods. The HRA should be based on a robust analysis of available data in order to draw conclusions, utilising existing data is bespoke surveys have not been conducted

On the issue of the heronry, the data (provided in the Ecological Impact Assessment, Table 4.3.6.1 p.34) shows a sustained decline in breeding numbers for the previous two decades but which appears marked in the last six years. Whilst this decline cannot be attributed to activities at the site, it is equally difficult to conclude that increased site activity has had no effect at all. As with other receptors, it appears at least possible that increased human activity (vehicles passing through woodland, human presence throughout the site, amplified music) at the site would not have a beneficial impact on sensitive nesting bird species. Ongoing monitoring would go some way to assessing this potential impact.

Overall, I am not convinced that sufficient information has been provided to conclude that impacts are negligible. The absence of a satisfactory baseline with which to compare the more recent ecological information is problematical and hinders an objective assessment. In my view, the proposed increase in activity at the site is highly unlikely to have no impact on some sensitive receptors, especially bird species using the adjacent intertidal areas. Insufficient detail has been provided to demonstrate that there will be no impact.

Further bat surveys have been recommended and I would concur that there is insufficient information on the potential impacts of lighting in particular on bat species. These surveys should be provided prior to determination.

NPPF, Circular 06/2005 and Natural England Standing Advice on Protected Species, require that planning decisions are based on full, up-to-date ecological information and it is essential that all necessary survey, assessment and mitigation information is available to the LPA prior to determination, particularly in the case of protected species, which are a material planning consideration. This will enable the LPA to determine the application on the basis of full knowledge about the ecological impacts of the proposal and to ensure that any impacts can and will be mitigated, and are acceptable.

If you have any queries please don't hesitate to contact me.

Kind regards,

Tristan

Tristan Norton

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